



Medicare Advocacy Toolkit

Medicare Part B Enrollment for New Yorkers with Disabilities

An Advocate’s Toolkit for Helping Individuals Under 65 Enroll in Medicare Part B

Spring 2020

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About the Medicare Rights Center

Based in New York, the Medicare Rights Center is a national, nonprofit consumer service organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Since 1989, Medicare Rights has helped people with Medicare understand their rights and benefits, navigate the Medicare system, and secure the quality health care they deserve. Medicare Rights is committed to:

1. Serving as a **kind and expert** health insurance counselor, educator, and advocate for those who need it most.
2. Providing **independent, timely, and clear** information on Medicare, Medicaid for dual-eligibles, and related topics to communities nationwide.
3. Fostering **diverse** partnerships and points of view.
4. Finding **lasting** solutions to systemic problems that prevent older adults and people with disabilities from accessing needed health coverage and care.

About the Medicare Advocacy Toolkits

With 30 years of counseling and advocacy experience, the Medicare Rights Center possesses specialized knowledge about the barriers people with Medicare face in accessing affordable health care, as well as strategies for overcoming these barriers. This series of Medicare Advocacy Toolkits has been developed for any New York advocate who is helping older adults and people with disabilities navigate health insurance benefits. The goal of this project is to empower New York advocates and those they serve to navigate Medicare coverage so that they can access needed care. While intended for a New York audience, the Medicare Advocacy Toolkits may offer lessons to other states and be useful resources as advocates and policymakers think about ways to improve the federal Medicare program, which today serves 60 million Americans.

Advocates with additional questions can contact Medicare Rights' professional email inbox at professional@medicarerights.org. Consumers with questions can call Medicare Rights' national consumer helpline at 1-800-333-4114.

Acknowledgements

Support for this work was provided by the New York State Health Foundation (NYSHealth). The mission of NYSHHealth is to expand health insurance coverage, increase access to high-quality health care services, and improve public and community health. The views presented here are those of the author and not necessarily those of the New York State Health Foundation or its directors, officers, and staff.

The author, Jacob McDonald, would like to thank everyone who makes possible the Medicare Rights Center's counseling and advocacy work, with a particular acknowledgement of the Medicare beneficiaries and caregivers whose experiences have informed the organization's advocacy and these Medicare Advocacy Toolkits. The author specifically thanks Alice Murphy,

Emily Whicheloe, Claire McGrath, and Mitchell Clark for their research, writing, and editorial support.

The Medicare Rights Center provides these Medicare Advocacy Toolkits as a public service. They are not intended as personalized legal advice, nor is Medicare Rights acting as a private attorney in providing toolkit content. For the latest information about toolkit topics and customized assistance, contact Medicare Rights, 1-800-MEDICARE, or a local [State Health Insurance Assistance Program](#) (SHIP).

Introduction: Medicare Part B Enrollment for New Yorkers with Disabilities

More than a quarter of calls to the Medicare Rights Center’s national helpline relate to Part B enrollment. This part of Medicare is vital, covering medically necessary outpatient services, including services received from a licensed health professional, durable medical equipment, and preventive services.¹ While individuals are automatically enrolled in Part B after receiving two years of Social Security Disability Insurance (SSDI) payments, too many decline enrollment based on misinformation or lack of information and later discover they face penalties and gaps in coverage.²

This Medicare Advocacy Toolkit serves as a step-by-step resource to help advocates and people eligible for Medicare navigate Part B enrollment challenges. The toolkit first describes the problem and target audience, then explains strategies for enrolling in Part B and offers a case example to demonstrate how to evaluate and use these strategies in a complex scenario. Throughout the toolkit, content is organized in a way that parallels how our counselors evaluate and troubleshoot actual Medicare issues. In addition, the toolkit contains a wealth of citations to the relevant rules that form the basis for helping people solve their Medicare problems.

The Problem

Nearly nine million people are enrolled in Medicare due to disability.³ Timely Part B enrollment is critically important for ensuring that these individuals avoid late enrollment penalties, higher out-of-pocket health care costs, and gaps in coverage that can present barriers to accessing needed services. Yet, many beneficiaries mistakenly decline Part B when they think they have other primary coverage or they do not think they can afford the premium and, as a result, face dire consequences.

An individual who declines Part B when first eligible can incur a 10% late enrollment penalty (LEP) on their Part B premium for each 12-month period they remain un-enrolled.⁴ If the premium goes up, as it tends to do from year to year, so does the penalty.⁵ For most individuals, the LEP will last until they turn 65.⁶ In 2017, an estimated 701,000 people with Medicare were

¹ [42 U.S.C. §§ 1395j–1395w-6](#); The Social Security Administration’s (SSA’s) Program Operational Manual System (POMS), [HI 00805.001\(A\)\(1\)](#); Medicare Rights Center, [Introduction to Medicare](#) and [Medicare Part B-Covered Services](#).

² [42 U.S.C. 426\(b\)](#); [42 C.F.R. § 406.12](#); POMS, [HI 00805.040\(A\)\(1\)](#); [HI 00805.110\(A\)](#). There is an exception to the waiting period for people who have Amyotrophic Lateral Sclerosis (ALS), commonly known as Lou Gehrig’s disease. People diagnosed with ALS will be automatically enrolled in Medicare Part A and B the same month they receive their first SSDI check. POMS, [DI 11036.001](#); Medicare Rights Center, [How to enroll in Medicare if you have ALS](#).

³ Centers for Medicare & Medicaid Services (CMS), [CMS Fact Facts](#).

⁴ [42 U.S.C. § 1395r\(b\)](#); POMS, [HI 01001.010\(A\)\(1\)](#) and (B).

⁵ POMS, [HI 01001.010\(A\)\(2\)](#).

⁶ POMS, [HI 01001.010\(A\)\(3\)](#); Medicare Rights Center, [Medicare Part B late enrollment penalties](#).

paying a Part B LEP, with the average penalty amounting to nearly a 30% increase in the monthly premium.⁷

Entering a new Initial Enrollment Period (IEP) eliminates an individual's LEP.

An individual's IEP is three months before, the month of, and three months after they become eligible for Medicare. The IEP usually refers to the period surrounding an individual's 65th birthday month. Entering a new IEP also resets the count of months when the individual should have had Part B but did not.

For example, when an individual has Medicare due to disability and a Part B LEP, their LEP is eliminated when they turn 65.⁸ Even if they disenroll from Part B and accrue a new LEP, Social Security will only consider the months after their new IEP ends in calculating a new LEP.⁹ For people with Medicare due to End-Stage Renal Disease (ESRD) or disability, each separate entitlement to Part A is considered its own penalty period.¹⁰

For instance, if an individual is entitled to Medicare due to disability for five years and then loses it because they are no longer disabled, any months that count toward the Part B LEP would be reset to zero if they later became entitled to Medicare again. In addition, if an individual develops ESRD while being entitled to Medicare through age or disability, they can use the ESRD IEP to eliminate and reset the LEP.¹¹

In addition to the late enrollment penalty, individuals who decline Part B may face periods of time in which they have no access to primary health insurance. Employer coverage that is not through current employment (like retiree coverage)¹² does not have to pay primary once someone is eligible for Medicare due to disability.¹³ After the initial opportunity to enroll (known as the Initial Enrollment Period (IEP)), many individuals will have to wait to enroll until the annual General Enrollment Period (GEP). The GEP runs from January 1 through March 31 each year.¹⁴ When an individual enrolls during the GEP, their coverage will not start until July 1 of that year.¹⁵ This means that if someone misses their IEP, they may be without primary insurance—or any health insurance—for over a year.

⁷ Medicare Rights Center, [Medicare Trends and Recommendations: An Analysis of 2017 Call Data from the Medicare Rights Center's National Helpline](#).

⁸ POMS, [HI 01001.010\(A\)\(3\)\(a-b\)](#).

⁹ Ibid.

¹⁰ POMS, [HI 01001.010\(A\)\(3\)\(c\)](#).

¹¹ POMS, [HI 01001.010\(B\)\(2\)\(h\)](#).

¹² The exception to this is for Federal Employee Health Benefits (FEHB) for retired federal employees. Unlike other retiree insurance, FEHB will pay primary if you do not enroll in Part B. Medicare Rights, [Federal Employee Health Benefits \(FEHB\) basics; Making Part B enrollment decisions with FEHB retiree coverage](#).

¹³ CMS, Medicare Secondary Payer (MSP) Manual, [Ch. 2](#), § 30.1.

¹⁴ POMS, [HI 00805.025\(A\)](#); Medicare Rights Center, [How to enroll in Medicare if you missed your Initial Enrollment Period](#).

¹⁵ POMS, [HI 00805.025\(B\)\(3\)](#).

Target Audience

This Medicare Advocacy Toolkit is designed to help advocates address the needs of New Yorkers who have been automatically enrolled in Medicare due to disability, but have declined or disenrolled from Part B. This means the individual is under 65 and has received SSDI benefits for over 24 months (or has started receiving SSDI benefits for individuals with ALS).¹⁶ Information in this toolkit about qualifying for Medicare through SSDI also applies to individuals who receive railroad disability,¹⁷ disabled widow(er)'s benefits,¹⁸ and "adult disabled children" who qualify for childhood disability benefits.¹⁹

It is important to understand that other groups of Medicare beneficiaries have different enrollment processes and, consequently, may require different advocacy strategies. Thus, this toolkit is not intended for use with individuals who are eligible for Medicare due to age or because they have ESRD. For these groups, please contact 1-800-MEDICARE or Medicare Rights' professional email inbox at professional@medicarerights.org.

Sometimes individuals are **retroactively awarded SSDI benefits**. In such cases, the date of Medicare eligibility is based on the 25th month of when the SSDI award is calculated back to.

Take, for example, an individual who applies for SSDI, is denied, but wins on appeal three years later. They would receive a retroactive SSDI award that would provide them with a lump sum payment for three years of SSDI payments they should have, but did not, receive. They would also receive Medicare eligibility retroactive to one year (i.e. beginning on what would have been the 25th month of receiving SSDI benefits if their original application had been approved). Part A would be effective one year in the past. The individual could choose to have Part B effective prospectively, saving them from having to pay back premiums, or retroactively effective one year in the past, allowing them and their providers to submit claims from this time period to Medicare.²⁰

Strategies: Enrolling in Medicare Part B

The Part B enrollment strategies presented here are presented in the order that the Medicare Rights Center talks about them on its national consumer helpline. There are three standard enrollment periods for Part B: the Initial Enrollment Period (IEP: when an individual first becomes eligible), the Part B Special Enrollment Period (SEP: when an individual moves from job-based insurance), and the General Enrollment Period (GEP: available to all Medicare-eligible individuals annually). There are also three alternative, lesser-known Part B enrollment strategies, available to certain individuals: enrollment in a Medicare Savings Program (MSP), equitable relief, and equitable relief for Marketplace enrollees. Lastly, there are two very limited

¹⁶ [42 U.S.C. § 426\(a\)](#); [42 C.F.R. §§ 406.12](#) and [407.10\(a\)](#); POMS, [HI 00805.005\(A\)\(1\)-\(2\)](#); [DI 11036.001](#); Medicare Rights Center, [Medicare eligibility for those under 65](#) and [Medicare eligibility for disabled youths](#).

¹⁷ POMS, [RS 01601.160\(A\)](#); Medicare Rights Center, [How Medicare enrollment works with Railroad Retirement benefits](#).

¹⁸ POMS, [DI 10110.001](#).

¹⁹ POMS, [DI 10115.001](#).

²⁰ POMS, [HI 00805.195](#).

enrollment mechanisms that cover the same group of people: the disability special enrollment period (D-SEP) and equitable relief for disabled individuals.

Here are the basic steps that Medicare Rights follows when counseling individuals in need of Part B enrollment:

1. **Check the individual's eligibility for the IEP or Part B SEP**, since these are usually the easiest ways to enroll in Part B without penalty.
2. If the individual has missed their IEP or SEP, **check their income to see if they might qualify for a Medicare Savings Program (MSP)**. MSPs pay the monthly Part B premium for lower-income individuals and, importantly, will also enroll an individual in Part B without penalty (or will erase the penalty of an individual who already has one).
3. For those with incomes too high for an MSP or who need a significantly retroactive Part B effective date, **check to see if misinformation or a mistake might allow them to request one of two more common forms of equitable relief**. Equitable relief does not apply to most individuals, usually takes longer, and is less certain to be successful than other enrollment mechanisms.

Determining how your client should enroll in Part B

If someone has Medicare due to disability and wants to enroll in Part B, they will use one of the following methods:

- Initial Enrollment Period**
Was the individual newly enrolled in Medicare Part A within the last three months?
- Part B Special Enrollment Period**
Does the individual have, or have they recently had, primary coverage through their own, a spouse's, or a family member's job?
- Medicare Savings Program**
Is the individual's income low enough to qualify for an MSP?
- Equitable Relief**
Did a federal employee make a mistake or provide misinformation to the individual that caused them to turn down Part B?
- Equitable Relief for Marketplace Enrollees**
Did the individual decline Part B because they misunderstood their tax credits or cost-sharing with a Marketplace plan?
- Disability Special Enrollment Period**
Does the individual have employer coverage that was paying primary to Medicare even though it should have been paying secondary? If so, has that coverage stopped or will it stop paying primary?
- Equitable Relief for Disabled Individuals**
Is the individual eligible for the Disability Special Enrollment Period but unable to use it?
- General Enrollment Period**
For use when all else fails. The GEP runs January 1 through March 31, with Part B coverage effective on July 1.

4. Individuals in the **rare situation where their employer coverage not based on a current job has been incorrectly paying primary** to Medicare but has now stopped (or will stop) paying primary, can enroll in Part B using the **disability special enrollment period** or, the more uncertain, **equitable relief for disabled individuals**.
5. **Help the individual enroll in Part B through the GEP.** Although it is available to anyone eligible for Part B, it is last on the list since it is the most likely to result in penalties and gaps in coverage.

Two enrollment strategies that do not work.

Since they often face a gap in coverage, individuals who mistakenly decline Part B and are told by Social Security they will have to wait to enroll will often look to go around Medicare so that they can access health insurance. These individuals usually first try to buy an individual health insurance plan. When told they cannot purchase an individual health insurance plan because they have Medicare Part A, they try to disenroll from Part A. Unfortunately, buying into an individual health insurance plan or dropping Medicare almost never works.

Buying into an individual insurance plan. It is illegal for an insurer who knows a person has any part of Medicare to sell that person individual health insurance coverage that duplicates Medicare benefits.²¹ In other words, individuals with Part A of Medicare should not be sold individual health insurance plans, such as Marketplace plans (also known as Qualified Health Plans).

Dropping Medicare. When an individual applies for SSDI, they are also applying for Medicare.²² As a result, individuals on SSDI are automatically enrolled in Medicare Part A and B.²³ While these beneficiaries can choose to decline Part B, they cannot choose to decline Part A.²⁴ The only way to avoid Medicare Part A entitlement is through withdrawal of the original SSDI application, which means giving up both SSDI and Medicare benefits.²⁵ This withdrawal would also require the individual to pay back all SSDI payments they had already received and any payments Medicare had made on their behalf.²⁶ In almost all cases, individuals would not want to or could not afford to drop Medicare, even if doing so would allow them to purchase an individual health insurance plan.

²¹ [42 U.S.C. § 1395ss\(d\)\(3\)\(A\)\(i\)](#).

²² Social Security, [Form SSA 16](#): “I apply for a period of disability and/or all insurance benefits for which I am eligible under Title II and Part A of Title XVIII of the Social Security Act, as presently amended.”

²³ [42 U.S.C. 426\(b\)](#); POMS, [HI 00805.040\(A\)\(1\)](#); [HI 00805.110\(A\)](#).

²⁴ POMS, [HI 00801.002](#) and [HI 00820.001](#).

²⁵ Ibid.

²⁶ POMS, [GN 00206.005\(A\)](#) and [GN 00206.020\(A\)](#).

When individuals stop collecting SSDI.

Medicare Rights often hears from people who are confused about how their SSDI and Medicare benefits operate together, especially when they are working. Usually, individuals have issues if they stop receiving SSDI for either of two common reasons.

First, individuals stop receiving SSDI if Social Security considers their work to be substantial gainful activity (SGA).²⁷ Social Security considers work to be SGA if an individual is still disabled, but they earn over a certain amount each month for enough months. After that period, the individual will stop receiving a monthly disability benefit from Social Security.²⁸ These individuals still receive Medicare Part A and, assuming they start directly paying for their premium, Part B. Since they are still Medicare-eligible for nearly a decade after beginning SGA, these individuals should follow the same enrollment decision guidelines as other people with Medicare due to disability, even though they are no longer receiving SSDI.²⁹ After enough years of SGA, individuals can lose premium-free Part A eligibility. At that time they can either drop Medicare coverage or buy in, meaning pay for both Medicare Part A and Part B.³⁰

Second, individuals stop receiving SSDI when Social Security no longer considers them disabled. When an individual loses SSDI for this reason, they also immediately lose Medicare eligibility (unless they are eligible for Medicare due to age or ESRD diagnosis).³¹ Occasionally, Medicare Rights hears from individuals who are no longer disabled and frustrated that they are still receiving Medicare. Such individuals should contact Social Security for directions on providing updated medical documentation to change their disability status. Individuals collecting SSDI are required to “promptly” report any improvement in their medical condition.³²

Enrolling in Part B through the Initial Enrollment Period

Who is eligible: Individuals have an IEP when they first become entitled to Medicare due to disability (usually the 25th month of receiving SSDI) that ends at the end of the third month after the month they become entitled to Medicare.³³

When to enroll: Individuals are automatically enrolled in Medicare Part A and Part B when they qualify for Medicare due to disability.³⁴ At the time they are notified of their enrollment, individuals receive a Medicare card with a form on the back that allows them to decline Part B

²⁷ POMS, [DI 10501.001](#); [DI 10501.015](#).

²⁸ Ibid.

²⁹ Social Security, [Working While Disabled: How We Can Help](#).

³⁰ POMS, [DI 40510.140](#); [HI 00801.170](#).

³¹ POMS, [HI 00801.146](#); [HI 00801.161](#). Individuals who are still disabled but lost their disability status should consult with Social Security. Without a disability status, they will not be eligible for Medicare due to disability.

³² Social Security, [What You Need to Know When You Get Social Security Disability Benefits](#) (p. 8).

³³ [42 U.S.C. 426\(b\)](#); POMS, [HI 00805.040\(A\)\(1\)](#); [HI 00805.110\(A\)](#). When the last day of an individual’s IEP ends on a weekend or federal holiday, the IEP is extended for an additional business day. [POMS HI 00805.135](#).

³⁴ Ibid.

by checking the box, signing the form, and returning it in the included postage-paid envelope.³⁵ Even if an individual has sent in this form to decline Part B, they can cancel this declination if they act before the end of their IEP.³⁶

How to enroll: If an individual declined Part B enrollment, but is still within their IEP, they can re-enroll by completing form [CMS 40B](#) and submitting it to a local Social Security office (this form may not be submitted online).³⁷ Individuals should take notes on the details of their visit in case there are any problems. If the individual who declined Part B was “mentally incompetent,” they can also have their declination cancelled.³⁸ A representative will need to show either a signed statement from a physician or a court order certifying the person was incompetent at the time they declined Part B.³⁹

Troubleshooting Tips

Social Security generally processes IEP enrollments (like a Part B application sent to cancel a declination of Part B) quickly and correctly. In rare cases, Medicare Rights has seen applications that take more than three months to process and others that are incorrectly denied.

- **If the application is delayed:** Reach out to the local office and a staff person can find where the application is being processed and ask that it be expedited.⁴⁰ In more urgent cases, such as when an individual is not able to access needed health care due to a delay, Medicare Rights has also reached out to Social Security’s public affairs specialists and to federal elected officials.⁴¹
- **If the application is denied:** Appeal the decision.⁴² Social Security should send a decision letter with directions for how to appeal, though it can be faster to go back to the local office to have it resolved informally. If the deadline to appeal has expired, consider using equitable relief (explained later in this toolkit).

Enrolling in Part B through the Special Enrollment Period (SEP)

Many people who qualify for Medicare due to disability also qualify for other types of health insurance, including through their own, a spouse’s, or a family member’s employment. Those with primary health insurance often choose to enroll in Medicare Part A and decline Part B in order to save money on the monthly Part B premium. These individuals should be eligible for

³⁵ POMS, [HI 00805.055\(B\)](#); [HI 00805.110](#); [HI 00805.125\(A\)-\(B\)](#).

³⁶ POMS, [HI 00805.055\(B\)\(2\)\(5\)](#).

³⁷ An individual may find their local Social Security office by using the [Social Security Office Locator](#). See, also, Medicare Rights Center, [How to enroll in Medicare if you are under 65 and have a disability](#).

³⁸ POMS, [HI 00805.055\(D\)](#).

³⁹ POMS, [HI 00805.055\(E\)](#).

⁴⁰ POMS, [GN 01070.228](#).

⁴¹ Social Security, New York Region, [Public Affairs Specialists](#).

⁴² [20 C.F.R. § 405.904\(a\)\(1\)](#).

the Part B Special Enrollment Period (SEP).⁴³ (There are different enrollment rules for individuals who are Medicare-eligible due to age, and individuals who have Medicare due to ESRD do not qualify for the SEP even if they also have Medicare due to disability.)⁴⁴

If an individual enrolls in Part B during their SEP, they will typically avoid a Part B late enrollment penalty.⁴⁵ However, if they delay enrolling in Part B until after their job-based coverage ends, they will still be responsible for any health care costs incurred in the months after losing job-based coverage and before Medicare takes effect.

Individuals should consider enrolling in Part B if their job-based insurance is from a small employer.

Job-based coverage from an employer with fewer than 100 employees is secondary to Medicare for those eligible for Medicare due to disability.⁴⁶ This means that the job-based insurance may start denying primary payments and only pay their share as secondary insurer. Therefore, individuals with coverage through small employers (employers with fewer than 100 employees) who delay Part B enrollment, may have no primary health insurance. Although coverage through an employer of fewer than 100 employees may pay secondary, people with Medicare due to disability can still qualify for the Part B SEP if the small employer coverage is through their, their spouse's, or their divorced spouse's job (i.e. they cannot use the Part B SEP if the small employer coverage is through their family member's job).⁴⁷ Medicare Rights advises its clients to speak with Social Security about any enrollment decisions they are making, document who they talked to, when, and what was said.⁴⁸ If a mistake is made, that information can be used to apply for equitable relief.

Who is eligible: To qualify for the SEP, a beneficiary must be eligible for Medicare because of disability and have:

1. Insurance from their own, their spouse's,⁴⁹ or their divorced spouse's current job (or through a family member's current job at a large employer, one with 100+ employees),⁵⁰ or must have had such insurance in the last eight months;⁵¹ and

⁴³ [42 U.S.C. § 1395p\(i\)](#); [42 C.F.R. §§ 406.24](#) and [407.20](#); CMS, Medicare General Information, Eligibility, and Entitlement [Ch. 2](#) §§ 40.3 and 40.3.3; CMS, Medicare Secondary Payer Manual [Ch. 1](#) and [Ch. 2](#).

⁴⁴ POMS, [HI 00805.266](#); [HI 00805.265\(A\)](#): "Individuals with end-stage renal disease (ESRD) are not eligible for the SEP or premium surcharge rollback. This includes individuals who are dually-entitled to Medicare based on ESRD and age or disability."

⁴⁵ POMS, [HI 00805.751\(B\)\(2\)](#); Medicare Rights Center, [Enrolling in Medicare with job-based insurance](#).

⁴⁶ POMS, [HI 00805.266](#).

⁴⁷ Ibid.

⁴⁸ Medicare Rights Center, [Questions to ask Social Security during Medicare enrollment](#).

⁴⁹ Social Security considers a domestic partner to be a family member, but not a spouse. POMS, [HI 00805.266](#).

⁵⁰ In most cases, the employer needs to have at least 100 employees for coverage through a family member. The exception is that a multi-employer plan will qualify if at least one of the participating employers has 100 employees. POMS, [HI 00620.178](#); [HI 00805.266](#).

⁵¹ POMS, [HI 00805.265\(A\)](#); POMS, [HI 00805.266](#).

2. Been continuously covered by job-based insurance or Part B since becoming Medicare-eligible, including the first month they became Medicare-eligible.⁵²

It is important that the job-based insurance the individual is receiving is from **current employment**, rather than a disability or retirement plan,⁵³ a severance package, or COBRA.⁵⁴ An individual is not eligible for the SEP when these types of coverage end. Individuals are also not eligible for the SEP as a result of their incarceration ending.⁵⁵ There is a small exception for individuals with hours' bank arrangements (most commonly through a union). Such arrangements can provide temporary job-based coverage in-between active employment and after employment ends. As a result, this coverage is treated as coverage through current employment while the arrangement holds, even if the employment has ended.⁵⁶ This is a limited exception and only applies to hours' bank arrangements, not to long-term disability designations or other situations where coverage carries over after employment ends.⁵⁷

The Part B SEP lasts for as long as an individual has job-based insurance through current employment and for eight months after that coverage or employment ends.⁵⁸ A beneficiary is ineligible for the SEP if, at any point, they have had more than eight consecutive months without coverage from either Medicare or current employment since becoming Medicare-eligible.⁵⁹ If an individual is enrolling in Part B within the eight months after their job-based coverage has ended, they are eligible for the SEP regardless of whether the employee quit their job or retired, their position was terminated, or the employee whose employer provided the coverage passed away. If the job-based health plan is terminated retroactively, the Part B SEP is triggered when the employee is notified of this, not when the coverage actually ends.⁶⁰

The Part B SEP can be used repeatedly: An individual who uses the SEP can do so again if they later disenroll from Part B for qualifying job-based coverage and then re-enroll in Part B within eight months.⁶¹ Once they fail to meet the qualifications, however (i.e. letting an eight-month period or their first month of eligibility go by without enrolling in Part B or job-based coverage through current employment), they lose access to the Part B SEP even if they later

⁵² POMS, [HI 00805.270\(A\)\(1\)](#). If the individual enrolls in Part B using their IEP, then later drops it, they may still qualify for the Part B SEP even if they were not enrolled in Part B during the first month they became Medicare eligible. In order to qualify, the individual would need to have had employer coverage the month they terminated Part B.

⁵³ The exception to this is for Federal Employee Health Benefits (FEHB) for retired federal employees. Unlike other retiree insurance, FEHB will pay primary if you do not enroll in Part B. Medicare Rights, [Federal Employee Health Benefits \(FEHB\) basics; Making Part B enrollment decisions with FEHB retiree coverage](#).

⁵⁴ [42 C.F.R. § 407.20\(c\)](#).

⁵⁵ Medicare Rights Center, [Medicare coverage during incarceration](#).

⁵⁶ POMS, [HI 00805.278](#).

⁵⁷ The employer (usually a union) should complete the hours' bank section of form CMS L564 in order to qualify the individual for the Part B SEP.

⁵⁸ POMS, [HI 00805.275\(A\)](#). When the last day of an individual's SEP ends on a weekend or federal holiday, the SEP is extended for an additional business day. [POMS HI 00805.135](#).

⁵⁹ POMS, [HI 00805.275\(E\)](#); This means to use the Part B SEP an individual must have been covered during the first month of their Medicare eligibility due to disability (usually the 25th month of receiving SSDI). POMS, [HI 00805.270\(A\)\(1\)](#).

⁶⁰ POMS, [HI 00805.275\(F\)](#).

⁶¹ POMS, [HI 00805.275](#); [HI 00805.270\(A\)\(2 - 3\)](#).

enroll in job-based coverage through current employment.⁶² If they have had gaps in coverage shorter than eight months, they are still eligible for the SEP.⁶³

Most of the same Part B SEP requirements apply to self-employed individuals as well. Some unique provisions: A plan can count as job-based insurance if at least one employee of the self-employed person is also covered by the plan.⁶⁴ And self-employed people can have job-based insurance through associations, fraternal organizations, and other groups.⁶⁵

Individuals can also qualify for the Part B SEP if they were covered by a national health plan while living abroad and they, or their spouse, were working.⁶⁶ In other words, Social Security treats a foreign national health plan as job-based insurance.⁶⁷ An individual applying for the SEP must show proof of national health plan coverage and employment.⁶⁸

When to enroll: The Part B SEP allows an eligible individual to enroll in Part B at any time while they still have their current job-based insurance, or during the eight-month window beginning the month after their employment or their coverage ends (whichever comes first).⁶⁹ The eight-month period begins in the first full month someone does not have job-based insurance through current employment.⁷⁰

Early use of the SEP: Those using the SEP while still covered by job-based coverage or in the first full month after coverage ends can choose to have their Medicare coverage take effect either:

- The month they enroll, or
- Any of the three months after the month they enroll.⁷¹

Later use of the SEP: For those using the SEP in the second (or later) month after employer coverage ends, Medicare coverage takes effect the month after they enroll.⁷²

⁶² Ibid.

⁶³ POMS, [HI 00805.275\(G\)](#).

⁶⁴ POMS, [HI 00805.290](#).

⁶⁵ Ibid.

⁶⁶ POMS, [HI 00805.275\(A\)](#); POMS, [HI 00805.266](#): “We consider a person working for a foreign employer who has a plan that meets the definition of GHP, to have coverage under a GHP for purposes of the SEP and premium-surcharge rollback. This also applies to individuals working in countries with national health plans.”

⁶⁷ POMS, [HI 00805.266](#).

⁶⁸ POMS, [HI 00805.295\(E\)](#).

⁶⁹ [42 C.F.R. § 406.24\(b\)](#); POMS, [HI 00805.275\(A\)](#); Medicare Rights Center, [Enrolling in Medicare with job-based insurance](#).

⁷⁰ POMS, [HI 00805.275\(A\)](#).

⁷¹ POMS, [HI 00805.276](#).

⁷² [42 C.F.R. § 407.20\(e\)](#); POMS, [HI 00805.276](#).

SEP versus IEP and GEP: Since there is a shorter waiting period for those who use the SEP than for those who enroll at the end of their IEP, some individuals eligible for both might try to enroll using the SEP during their IEP. Unfortunately, this tactic doesn't usually work, since SEP requests filed during someone's IEP are processed as IEP enrollment requests (with an IEP effective date for coverage) with one exception: people who have had Medicare because of disability who enter the IEP because they will be turning 65 can use the SEP up until their 65th birthday.⁷³

If an individual tries to enroll in Part B using the SEP during the GEP (January 1 through March 31), they can choose the SEP effective date or the GEP effective date of July 1.⁷⁴

How to enroll: Complete and submit forms [CMS 40B](#) and [CMS L564](#) to a local Social Security office (these forms may not be submitted online).⁷⁵ See Medicare Rights' flier about the Part B SEP for a sample letter beneficiaries can use, too.⁷⁶ Form CMS L564 requires that the employer (or employers) complete the bottom part of the form in order to provide evidence that the applicant had job-based health insurance.⁷⁷ Individuals who are self-employed should have their job-based insurance complete the bottom part of form CMS L564.⁷⁸ Only employers (usually unions) who use hour's bank arrangements should complete the hours' bank section of the form.

To avoid delays from denied applications, it can be helpful to review the employer forms before submitting them. Employers will sometimes fail to complete the form (e.g. by leaving items blank) or use incorrect information (e.g. including the wrong end date for employment or listing the start date for health coverage to only be the start date of the most recent insurer rather than the very first date the employee was covered by the employer's plan). It can save time to review these forms before submitting them.

⁷³ POMS, [HI 00805.275\(B\)](#).

⁷⁴ POMS, [HI 00805.275\(C\)](#).

⁷⁵ POMS, [HI 00805.295](#). An individual may find their local Social Security office by using the [Social Security Office Locator](#). One CMS L564 form should be submitted for each employer that provided insurance while the individual was eligible for Medicare.

⁷⁶ Medicare Rights, [The Part B Special Enrollment Period](#).

⁷⁷ POMS, [HI 00805.295\(A\)\(1\)](#).

⁷⁸ POMS, [HI 00805.290\(C\)](#).

Troubleshooting Tips

As with the IEP, in rare cases Part B SEP enrollments may be delayed or incorrectly denied. If this happens, follow the same troubleshooting steps provided in the IEP section of this toolkit. Unique to SEP enrollments are problems proving a beneficiary had job-based coverage. Often this happens when an employer is unwilling or unable to complete the form CMS L564, perhaps because the company is no longer in business or the employment was many years in the past.

- **If there is no form CMS L564:** Social Security is required to accept many different kinds of evidence of job-based coverage, including, but not limited to: income tax returns, W-2s, pay stubs, receipts/statements showing payment of health insurance premiums, and cards or claims paid by the health insurance company.⁷⁹ Individuals should point the Social Security representative to Social Security's handbook (the Program Operations Manual System) at [HI 00805.295\(B\)](#), which directs representatives to accept these kinds of alternative evidence. In some cases, where nothing else was available, Medicare Rights has had the beneficiary sign an affidavit attesting to having carried job-based insurance (e.g. using form [SSA 795](#)).

Enrolling in Part B through a Medicare Savings Program (MSP)

MSPs are federally funded, state-run benefits that, at a minimum, pay the monthly Medicare Part B premium for beneficiaries with limited income and assets.⁸⁰ An MSP is not additional insurance; rather, it is a benefit program that assists with costs associated with a beneficiary's existing Medicare coverage.

Importantly, enrollment in an MSP also enables an individual to enroll in Part B outside of usual enrollment periods and have any Part B late enrollment penalty waived.⁸¹ Enrollment in an MSP also automatically enrolls, or deems, the individual in the Extra Help drug subsidy.⁸² Using MSPs as an enrollment mechanism—through what is known as the Part B Buy-in—has enabled Medicare Rights to help many beneficiaries who had no other immediate enrollment period available to them.⁸³

Who is eligible: MSPs are available nationwide, but eligibility rules differ by state.⁸⁴ Most states have both income and asset requirements for MSP eligibility, but New York has no asset requirement.⁸⁵ Since income limits change annually based on federal poverty guidelines, it is

⁷⁹ POMS, [HI 00805.295\(B\)](#).

⁸⁰ Medicare Rights Center, [Medicare Savings Program basics](#).

⁸¹ [42 U.S.C. § 1395v\(a\),\(e\)](#); POMS, [HI 00815.001](#), [009](#), [018](#), [039](#), and [00801.140](#); Medicare Rights Center, [Using MSPs to enroll in Part B](#).

⁸² POMS, [HI 03001.005\(A\)](#); Medicare Rights Center, [Extra Help basics](#).

⁸³ Medicare Rights Center, [Using MSPs to Enroll in Part B](#).

⁸⁴ Medicare.gov, [Medicare Savings Programs](#); National Council on Aging, [Medicare Savings Programs \(MSPs\): Eligibility and Coverage \(2019\)](#).

⁸⁵ Medicare Rights Center, [Medicare Savings Program financial eligibility guidelines](#).

important to use up-to-date numbers.⁸⁶ Even if an individual’s income is above the threshold, they may still be eligible for an MSP if they can claim certain income disregards or they qualify for certain types of trusts.⁸⁷ There are three primary types of MSP recipients: Qualifying Individual (QI), Specified Low-Income Medicare Beneficiary (SLMB), and Qualified Medicare Beneficiary (QMB). For information about the benefits available to enrollees in each program, visit Medicare Rights’ Medicare Interactive resource.⁸⁸ An important difference between the different MSP types are the different effective dates, since the effective date of the MSP will also be the effective date of Part B (if the individual doesn’t already have Part B).⁸⁹

2019 New York State MSP Income Eligibility Levels			
MSP	Individuals	Couples	Effective Date of the MSP
QI	\$1,456	\$1,960	Three months before the month of application (or January if the month of application is January, February, or March).
SLMB	\$1,296	\$1,744	Three months before the month of application.
QMB	\$1,084	\$1,457	The month after the month of application.

How to enroll: Applications for MSPs are processed by local Departments of Social Services, such as the Human Resources Administration in NYC.⁹⁰ Applicants must complete form [DOH-4328](#) and submit proof of their income, date of birth, New York State residency, and identity.⁹¹ The local Department of Social Services should notify someone within 45 days of the submission of their application if they are eligible for the MSP.⁹² Medicare Rights helps New York advocates (and particularly those in New York City) assist their clients with MSP applications. **For assistance, contact Medicare Rights’ professional email inbox at professional@medicarerights.org.** Local HIICAP offices also help with MSP applications.⁹³

⁸⁶ Medicare Rights Center, [MSP information sheet](#).

⁸⁷ See, generally, [18 CRR-NY § 360-4.3](#); New York State Department of Health, [Medicaid Reference Guide](#); New York State Department of Health, [GIS 19 MA/04](#).

⁸⁸ Medicare Rights Center, [MSP basics](#).

⁸⁹ POMS, [HI 00815.039](#).

⁹⁰ Medicare Rights, [Applying for a Medicare Savings Program](#).

⁹¹ New York State Department of Health, [Medicare Savings Program Application](#).

⁹² [45 C.F.R § 206.10\(a\)\(3\)\(i\)](#).

⁹³ New York State Office for the Aging, [HIICAP Local Offices](#).

Troubleshooting Tips

Medicare Rights has submitted tens of thousands of MSPs in New York City and understands the various reasons for application delays and incorrect denials. Counselors typically follow up directly with the Human Resources Administration, but beneficiaries and their advocates can also request a fair hearing if they would like their case heard.

- If an MSP is incorrectly denied: Request a fair hearing within 60 days of the date on the denial notice by following the directions on the notice. Beneficiaries can represent themselves in person at the hearing or have a lawyer, friend, or relative represent them. If the beneficiary does not have a notice of denial, they can still request a fair hearing by contacting the Office of Temporary Disability Assistance (OTDA) at 800-342-3334 or online. (Office of Temporary Disability Assistance, [Fair Hearing Request Form](#)). For more details on the process, see Medicare Rights' Fair Hearing flier. (Medicare Rights Center, [Fair Hearings in New York State](#).)

Enrolling in Part B through Equitable Relief

Sometimes an individual declines or disenrolls from Medicare Part B because of an error, misrepresentation, or inaction by a federal employee, such as a Social Security or 1-800-MEDICARE representative.⁹⁴ For example, Medicare Rights callers have been incorrectly told by Social Security representatives that they can decline enrolling in Part B without penalty because they have retiree insurance. In other instances, Medicare Rights helpline callers have applied for Part B during an enrollment period but never heard back from Social Security. In these cases, the individual may be able to enroll in Part B through a process known as equitable relief.⁹⁵

Who is eligible: When federal government employees (usually a Social Security or 1-800-MEDICARE representative) make a mistake that negatively affects an individual's Part B enrollment, the individual can request equitable relief from Social Security.⁹⁶ If approved, the individual will receive prospective or retroactive Part B enrollment and have their Part B late enrollment penalty waived.⁹⁷

How to enroll: To request equitable relief, an advocate or beneficiary should write a letter to the local Social Security office explaining that an error, misinformation, or inaction by a federal employee caused a delay in Part B enrollment. (Medicare Rights offers step-by-step directions

⁹⁴ Unfortunately, misinformation provided by state employees, employers, insurance companies, and benefits administrators does not seem to be covered by equitable relief. See [42 C.F.R. § 407.32](#): "...a Federal employee or any person authorized by the Federal Government to act in its behalf..."

⁹⁵ Medicare Rights Center, [Equitable relief](#).

⁹⁶ Created under federal law, [42 U.S.C. § 1395p\(h\)](#), the equitable relief provision permits Social Security to adjust a beneficiary's record to grant retroactive coverage or waive a penalty if the beneficiary's "enrollment or coverage rights have been prejudiced by the error, misrepresentation, action or inaction of an employee or agent of the Government." POMS, [HI 00830.001 et seq](#); see also CMS, Medicare General Information, Eligibility, and Entitlement [Ch. 2](#) § 40.8.

⁹⁷ [42 U.S.C. § 1395p\(h\)](#); [42 C.F.R. § 407.32](#).

and a [model letter](#) on its website.⁹⁸) The letter should be as specific and detailed as possible. For example, if a Social Security representative has provided misinformation, the letter should include the representative's name or description, the office they work in, what they said, the date and time they said it, and whether the information was conveyed in person or by phone. Such detailed information will not be available in all cases, but as much information as possible should be included in the letter to help ensure its chances of success. In addition, the letter should clearly request the result the beneficiary seeks (e.g., to be enrolled in Part B retroactive to a specific date, to have a Part B LEP waived, etc.).

Social Security is not required to respond to equitable relief requests within any set timeframe, though Medicare Rights typically sees action taken within three months. In addition, Social Security does not have to send the beneficiary a formal decision letter in response to the equitable relief request and, as a result, such letters are rare.

Typically, the effective Part B date for successful equitable relief applications will be the same as if the error, misrepresentation, or inaction had not happened. This means that the effective date could be retroactive and the beneficiary may need to inform Social Security as to how they will pay for back premiums. However, if retroactive coverage would involve six or more months of back premiums, beneficiaries can also elect to have Part B start prospectively.⁹⁹ This often happens in cases where an individual wins a retroactive SSDI award after going through the appeals process for their disability benefits.¹⁰⁰

Troubleshooting Tips

Equitable relief is tricky because Social Security is not required to respond to a request within any set timeframe, they do not always send any response at all, and an equitable relief decision does not come with official appeal rights.

- **If equitable relief is delayed or not responded to:** Submit a new letter or reach out to Social Security's public affairs specialists and federal elected officials.¹⁰¹
- **If equitable relief is denied:** The beneficiary may (or may not) receive a letter with appeal rights and, if so, they can try to appeal. In most cases, Medicare Rights would submit a new letter (with additional details, if possible) or ask for a meeting with the local Social Security office, since equitable relief decisions are not supposed to be appealable.¹⁰²

⁹⁸ Medicare Rights Center, [Part B Enrollment Toolkit](#).

⁹⁹ POMS, [HI 00805.195](#).

¹⁰⁰ Ibid.

¹⁰¹ Social Security, New York Region, [Public Affairs Specialists](#).

¹⁰² POMS, [HI 00805.170\(A\)\(5\)](#).

Retroactive Part B

When someone is awarded retroactive Medicare Part B, they gain the benefit of being covered by Medicare back to their retroactive start date. This means that they or their providers can submit claims to Medicare and get reimbursement for health expenses incurred during the retroactive period. To ensure the retroactive benefit actually covers their health care, individuals should reach out to their providers with copies of their Social Security award letter showing a retroactive Part B effective date. This letter serves as a notice to providers and allows them to submit old claims—even claims submitted more than one year from the date of service.¹⁰³

When Part B is retroactive, the individual is also responsible for paying the Part B back premiums. Often, Social Security representatives ask individuals getting a retroactive Part B award to pay the back premiums immediately. Individuals who might be unable to pay their back premiums in a lump sum can request an installment plan.

Enrolling in Part B through Equitable Relief for Marketplace Enrollees

Equitable relief for Marketplace enrollees is a very specific type of equitable relief for beneficiaries who have declined or disenrolled from Medicare Part B to stay in a Marketplace plan, more formally known as a Qualified Health Plan (QHP). Medicare Rights has witnessed how confusion about QHPs and Medicare can lead to Medicare enrollment mistakes. For example, some helpline callers have declined Part B because their subsidized QHP is cheaper. These individuals often do not realize that they will lose their QHP subsidy (cost assistance) because of their Medicare eligibility. Other callers don't realize they have made a mistake until the QHP stops paying primary for health costs or disenrolls them after they become Medicare-eligible.

It is rarely a good idea to have a QHP and Medicare at the same time.¹⁰⁴ This is because 1) when an individual enrolls in Medicare, they are generally no longer eligible to receive cost assistance from their QHP, 2) there is no guarantee that a QHP will pay for care once an individual is Medicare-eligible, and 3) an individual who keeps their QHP after becoming Medicare-eligible may face gaps in coverage and late enrollment penalties if they choose to enroll in Medicare at a later date.¹⁰⁵

Who is eligible: Equitable relief for Marketplace enrollees is designed to help certain Marketplace enrollees who have made Medicare enrollment mistakes. (Note that this relief is not available to those who have a QHP through the Small Business Health Options (SHOP) program.)¹⁰⁶ Those approved will have the opportunity to enroll in Part B and have their Part B late enrollment penalty waived or reduced.¹⁰⁷

¹⁰³ CMS, Medicare Claims Processing Manual, [Ch. 1](#) §70.7.2.

¹⁰⁴ Medicare Rights Center, [Making Part B enrollment decisions with QHP coverage](#).

¹⁰⁵ CMS, [Fact sheet on Medicare and the Marketplace](#).

¹⁰⁶ Ibid.

¹⁰⁷ SSA, Emergency Message [EM-16033 REV 6](#).

There are very specific criteria a beneficiary must meet to request this type of equitable relief. Namely, they must be (or have been) enrolled in a QHP, have premium-free Part A, and:¹⁰⁸

- Have an IEP that began between April 1, 2013, and March 1, 2020; or
- Have been notified of retroactive premium-free Part A enrollment between October 1, 2013, and June 30, 2020; or
- Have a Part B SEP that ended between October 1, 2013, and June 30, 2020.

For those requesting only that their Part B LEP be eliminated or reduced, they must have received the penalty after enrolling in Part B during a General Enrollment Period (GEP) between 2015 and 2019.

How to enroll: Request equitable relief for Marketplace enrollees from a local Social Security office. The process is uncommon, so Medicare Rights recommends that individuals go in person with a copy of the Emergency Message ([EM-16033 REV 6](#)), which explains exactly what the Social Security representative should do.¹⁰⁹ Individuals should take notes on the details of their visit in case there are any problems. In a situation where the beneficiary and their representative have been unable to go in person, we have also submitted a letter requesting equitable relief for Marketplace enrollees with evidence of QHP enrollment and form [CMS 40B](#).

Whether in person or in a letter, the individual should include three pieces of information:

1. They are requesting equitable relief for Marketplace enrollees.
2. The specific relief they are seeking (i.e. Part B enrollment effective on such and such date or waiver of their Part B late enrollment penalty).¹¹⁰
3. Proof of Marketplace coverage.¹¹¹

As with standard equitable relief, Social Security is not required to respond to this type of equitable relief request within any set timeframe, though Medicare Rights typically sees action taken within three months. In addition, Social Security does not have to send the beneficiary a formal decision letter in response to the equitable relief request and, as a result, such letters are rare.

Typically, the effective Part B date for successful applications for this type of equitable relief is the month the beneficiary requested relief. Alternatively, the beneficiary can choose that their

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ SSA, Emergency Message [EM-16033 REV 6](#): Individuals can request a Part B effective the same month they are applying for relief or either of the two months prior to the month they are applying.

¹¹¹ SSA, Emergency Message [EM-16033 REV 6](#): Proof of Marketplace coverage can come in many forms including (but not limited to): Marketplace Eligibility notices, Marketplace and Medicare notice, IRS form [1095 A](#) showing months of Marketplace coverage or subsidy amounts, Marketplace premium invoices and proof of payment, receipt from a Marketplace issuer indicating payment, and other Marketplace notices confirming enrollment.

Part B effective date be either of the two months prior to their request for relief.¹¹² Beneficiaries cannot use equitable relief for Marketplace enrollees if they are currently in their IEP or SEP.¹¹³

Troubleshooting Tips

Social Security offices are sometimes unfamiliar with equitable relief for Marketplace enrollees. As a result, many of Medicare Rights' clients have seen their applications denied, delayed, or ignored.

- **If the request is not accepted:** Go to a different Social Security office or back to the same one and try again. Firmly but politely ask the representative to review the emergency message that explains what the representative should do.¹¹⁴ Explain how the eligibility criteria are met. Even if the representative is doubtful of the process, be firm in asking them to process the application. You can also ask for a supervisor or manager.
- **If the request is delayed:** Reach out to the local Social Security office, and a representative can find where the application is being processed and ask that it be expedited.¹¹⁵ In more urgent cases, such as when someone is not able to access needed health care due to the delay, Medicare Rights has also reached out to Social Security's public affairs specialists and federal elected officials.¹¹⁶

Enrolling in Part B through the Disability Special Enrollment Period¹¹⁷

When an individual with Medicare has employer insurance, Medicare's rules determine which coverage should pay primary and which coverage should pay secondary. For example, if an individual with Medicare due to disability has coverage through their large employer (one with 100+ employees), the job-based coverage is primary while they are working and Medicare is primary when they stop working.¹¹⁸

Sometimes, an employer plan will pay primary when it does not have to, which can lead individuals to decline (or fail to enroll in) Part B. **A serious problem ensues if the employer insurance decides to stop paying primary:** the Medicare-eligible individual cannot enroll in Medicare right away, so they will go without primary health insurance and face a penalty once they do enroll. In addition, once the employer insurance realizes it has been incorrectly paying primary, it may seek to recoup primary payments made on behalf of the individual, thereby retroactively taking away the individual's primary health insurance.

The D-SEP can solve this problem by allowing the Medicare-eligible individual to enroll in Part

¹¹² SSA, Emergency Message [EM-16033 REV 6](#).

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ POMS, [GN 01070.228](#).

¹¹⁶ Social Security, New York Region, [Public Affairs Specialists](#).

¹¹⁷ Medicare Rights, [Using the Disability Special Enrollment Period \(D-SEP\)](#).

¹¹⁸ POMS, [HI 00805.266](#).

B immediately.¹¹⁹ The D-SEP, also called the “OBRA 93 process,” lasts seven months and allows individuals who are eligible for Medicare due to disability, and whose employer group health plan was previously their primary insurance, to enroll in Medicare Part B outside of an enrollment period without penalty.¹²⁰

When notified, employers, unions, and health plans will often reconsider their decision to cut off individuals from primary coverage. Individuals should consider filing a grievance with their employer plan or reaching out to human resources, their union representative, or other friends and colleagues at the employer in order to request that primary payments continue until the individual is able to enroll in Medicare Part B.

Who is eligible: Individuals with Medicare Part A due to disability who declined or failed to enroll in Part B because their employer insurance is or was incorrectly paying primary for them.¹²¹ The employer insurance is no longer through a current job, so, often, it is a long-term disability policy, a retiree plan, or COBRA.¹²²

When to enroll: An individual must apply for Medicare within seven months.¹²³ The seven-month period begins with whichever event happens later: the employer provides notice of the change in primary payer status or Medicare becomes the primary payer.¹²⁴

How to enroll: First, the employer must notify Medicare’s Benefits Coordination & Recovery Center (BCRC) of the change in payment status and the date on which the change will occur. The BCRC provides the employer with an official letter certifying the change in payer status that the employer needs to give to the employee. Then, the employer has to provide a separate letter to the employee, which serves as notice to the individual that they can use the D-SEP to enroll in Part B. Lastly, the beneficiary takes both letters to the local Social Security office.

Steps for employers:

- I. Notify Medicare: Inform Medicare’s BCRC of the change in payment status from primary to secondary. To do this, the employer should:
 1. Create a spreadsheet with:
 - The Medicare beneficiary's name, sex, date of birth, and Social Security number;
 - The date the employer plan will stop or has stopped making primary payments; and
 - The name of the employer, an employer contact, and a mailing address to receive the BCRC's letter.

¹¹⁹ [42 U.S.C. § 1395p\(i\)\(4\)](#); [59 FR 35935](#) (July 14, 1994); CMS’ [Instructions for Completing the Group Health Plan Report for the IRS/SSA/CMS Data Match](#) (Dec. 10, 2015) p. 8-9; the POMS, [HI 00805.300](#) and [HI 00805.310](#).

¹²⁰ Ibid.

¹²¹ POMS, [HI 00805.300\(A\)](#).

¹²² See, for example, POMS, [HI 00805.300](#); [HI 00805.330](#).

¹²³ POMS, [HI 00805.300\(C\)](#).

¹²⁴ Ibid.

2. Password protect the spreadsheet:
 - Go to File → Info → Protect Workbook → Encrypt with Password;
 - Enter a password; and
 - Re-enter the same password.
 3. Send the spreadsheet to Bert Joas (bjoas@ehmedicare.com) and cc: sskeffrey@ehmedicare.com; rjones@ehmedicare.com; dwalters@ehmedicare.com; Malachi.Dawson@cniias.net.
 4. Send a second email with the password to the same group (i.e. reply all).
- II. Notify the individual applying for Medicare: The employer should send the letter from the BCRC to the beneficiary. In addition, the employer should create a separate, dated letter that includes:¹²⁵
- The date when Medicare becomes primary and the employer plan becomes secondary;
 - The period the individual has been covered under the employer plan; and
 - A statement that the individual can enroll in Medicare using the D-SEP.

Medicare Rights has had issues with employers failing to include all three pieces of information in the letter. In particular, employers do not know what dates to put for the period during which the individual has been covered under the employer plan. These dates should usually be the start date of coverage to the present. This is because, in most cases, the individual is still covered by the employer plan, even if the plan is not paying primary. Individuals should stress to the employer the importance of accurately reporting all three points in the letter.

Steps for individual:

1. First, the individual should take the letter from the BCRC and the letter from their employer to the local Social Security office to enroll in Medicare Part B through the D-SEP.¹²⁶
2. Next, they should complete form [CMS 40B](#), which can be done at the office.¹²⁷ The individual should include the date they want Part B to be effective. The Social Security representative should write "Disability SEP" at the top of the form.¹²⁸
3. If the individual is requesting a retroactive Part B effective date, they should also complete form [SSA 795](#) explaining how they will pay for the back premiums (e.g., by having it withheld from their Social Security benefit or paying by check).¹²⁹

¹²⁵ POMS, [HI 00805.300](#)(B)(2).

¹²⁶ An individual may find their local Social Security office by using the [Social Security Office Locator](#).

¹²⁷ POMS, [HI 00805.310](#)(A)(1).

¹²⁸ Ibid.

¹²⁹ POMS, [HI 00805.310](#)(A)(4).

Troubleshooting Tips

Social Security offices are usually unaware of the D-SEP, and many will confuse it with equitable relief or the Part B SEP. For that reason, it can be important for individuals to:

1. Point the Social Security representative to the section of their handbook (the Program Operations Manual System) that covers the D-SEP ([HI 00805.300](#) and [HI 00805.310](#)).
2. Insist on having the D-SEP application processed, even if the Social Security representative does not believe it will work. Once the application is processed, an individual can appeal if the enrollment is denied.¹³⁰ Individuals do not have these appeal rights if the application is not processed.
3. Ensure the representative correctly processes the application (i.e. attaching the paperwork together, writing “Disability SEP” at the top, and forwarding it to the processing center).¹³¹
4. If needed, request a supervisor or try a different local office.
5. Take notes on the details of their visit in case there are any problems.

Enrolling in Part B through Equitable Relief for Disabled Individuals

Those individuals who might qualify for the D-SEP, but are having trouble getting the correct paperwork, should consider requesting equitable relief for disabled individuals, a special form of equitable relief.¹³² Unlike traditional equitable relief, which only applies to misinformation from federal government employees, equitable relief for disabled individuals includes relief to individuals whose Part B enrollment was negatively affected by misinformation from their employer or their insurer. Unfortunately, the relief is not as broad as it sounds. The evidence requirements narrow the group of who is eligible to essentially the same group that qualifies for the D-SEP.

Who is eligible: Individuals with Medicare Part A due to disability who declined, failed to enroll, or delayed enrolling in Part B because they received misinformation from their employer insurance or the employer about whether the insurance or Medicare would be primary.¹³³ In this case, the “misinformation” that the individual received would need to be that their employer insurance incorrectly paid primary to Medicare but has not stopped or will stop.¹³⁴ The individual must have evidence to prove that they received this misinformation, which is “a letter or other information from the employer” that explains when the employer insurance was paying primary,

¹³⁰ [20 C.F.R. § 405.904\(a\)\(1\)](#).

¹³¹ POMS, [HI 00805.310\(A\)\(1\)](#).

¹³² POMS, [HI 00805.320](#).

¹³³ POMS, [HI 00805.320\(A\)\(1\)](#).

¹³⁴ POMS, [HI 00805.320\(A\)\(1\)\(a\)](#).

that it should not have been paying primary (at least for part of that time), and the date the plan will stop or has stopped paying primary.¹³⁵

If approved, the individual will receive immediate Part B enrollment, without a penalty, effective the month they request relief or the date the plan stopped or stops paying primary.¹³⁶ If the individual is already enrolled in Part B, they will have their Part B late enrollment penalty waived.¹³⁷

Choosing between the D-SEP and equitable relief for disabled individuals.

These two separate processes address the same basic group of individuals, but they follow completely different enrollment protocols. In most cases, Medicare Rights prefers to use the D-SEP for two reasons. First, the D-SEP, unlike equitable relief for disabled individuals, is not a discretionary process and Social Security is required to accept and process a D-SEP application. As a result, every D-SEP application Medicare Rights has helped submit has been successful. Second, the D-SEP is usually processed quickly (within a few weeks), while equitable relief for disabled individuals often takes months to get a response.

There are two types of cases for which Medicare Rights uses equitable relief for disabled individuals rather than the D-SEP:

- The individual does not quite meet the eligibility requirements for the D-SEP. For example, maybe the individual has already enrolled in Part B and just wants to waive their late enrollment penalty, or perhaps the employer will not provide the notice required for the D-SEP.
- The individual received misinformation from their job-based insurance or the employer that negatively affected a Part B enrollment decision, but the misinformation was not that their job-based insurance paid primary. While these cases do not fit the evidence requirements, they do fit the general description for equitable relief for disabled individuals. In other words, individuals in these situations are unlikely to be granted equitable relief, but it is worth considering if the individual does not have any other options.

How to enroll: To request equitable relief for disabled individuals, an advocate or beneficiary must compile the appropriate paperwork and then take it to the local Social Security office.

Equitable relief for disabled individuals has specific evidence requirements.¹³⁸ First, the beneficiary should ask their employer to provide a dated note, on letterhead, that states:

- The period of time during which the employer insurance has been paying primary to Medicare;

¹³⁵ Ibid.

¹³⁶ POMS, [HI 00805.320\(A\)\(1\)\(c\)](#).

¹³⁷ POMS, [HI 00805.320\(A\)\(1\)](#).

¹³⁸ POMS, [HI 00805.320\(A\)\(1\)\(a\)](#).

- The employer insurance should not have been paying primary for at least part of this period; and
- The date the employer insurance will stop or has stopped paying primary.

What if the employer will not provide the letter?

In these cases, we have tried to prove the misinformation through other facts. For example, if a beneficiary's employer insurance continued paying primary even after they retired (retiree insurance is secondary to Medicare), possible proof of misinformation could be a letter that states when the beneficiary stopped working and insurance statements that indicate the plan continued to pay primary after that date. Individuals can also request Social Security's help in contacting the employer.

Next, an advocate or the individual should write a letter to the local Social Security office to request equitable relief for disabled individuals. The letter should cite Social Security's handbook (the Program Operations Manual System) at [HI 00805.320](#) and request the result the individual seeks (e.g., to be enrolled in Part B retroactive to a specific date, to have a Part B LEP waived, etc.).¹³⁹ Medicare Rights suggests that the individual attaches this letter to the one from the employer (or other evidence) and brings both documents to a meeting with a representative at the local Social Security office. Individuals should take notes on the details of their visit in case there are any problems.

Social Security is not required to respond to equitable relief requests within any set timeframe, though Medicare Rights typically sees action taken within three months. In addition, Social Security does not have to send the beneficiary a formal decision letter in response to the equitable relief request and, as a result, such letters are rare.

¹³⁹ POMS, [HI 00805.320](#).

Troubleshooting Tips

Equitable relief for disabled individuals, like traditional equitable relief, is tricky. Social Security is not required to respond to a request within any set timeframe, they do not always send any response at all, and an equitable relief decision does not come with official appeal rights.¹⁴⁰ In addition, Social Security offices are normally unfamiliar with the process. As a result, Medicare Rights' clients have seen their requests delayed or denied.

- **If you do not receive a response within two months:** Submit a new letter or reach out to Social Security's public affairs specialists and federal elected officials.¹⁴¹
- **If equitable relief is denied:** The beneficiary may (or may not) receive a letter with appeal rights and, if so, they can try to appeal. In most cases, Medicare Rights would submit a new letter (with additional details, if possible) or ask for a meeting with the local Social Security office, since equitable relief decisions are not supposed to be appealable.¹⁴²

Enrolling in Part B through the General Enrollment Period

Who is eligible: Individuals who cannot use any of the Medicare Part B enrollment pathways described previously can enroll in Part B during the General Enrollment Period.

When to enroll: The GEP runs from January 1 through March 31 each year, with Part B coverage effective on July 1.¹⁴³ Most people who use the GEP to enroll will face a Part B late enrollment penalty.¹⁴⁴

How to enroll: Eligible individuals should complete form [CMS 40B](#) and submit to the local Social Security office (this form may not be submitted online).¹⁴⁵ If the individual had job-based insurance through current employment at any point while they were eligible for Medicare, they should also submit form [CMS L564](#) employer in order to avoid an LEP.¹⁴⁶

¹⁴⁰ POMS, [HI 00805.170](#)(A)(5).

¹⁴¹ Social Security, New York Region, [Public Affairs Specialists](#).

¹⁴² POMS, [HI 00805.170](#)(A)(5).

¹⁴³ When the last day of the GEP ends on a weekend or federal holiday, the GEP is extended for an additional business day. [POMS HI 00805.135](#).

¹⁴⁴ [42 U.S.C. 1395r](#); POMS, [HI 01001.010](#); Medicare Rights Center, [Medicare Part B Late Enrollment Penalties](#).

¹⁴⁵ An individual may find their local Social Security office by using the [Social Security Office Locator](#).

¹⁴⁶ POMS, [HI 01001.010](#)(A)(1) and (B): One CMS L564 form should be submitted for each employer that provided insurance while the individual was eligible for Medicare.

Troubleshooting Tips

Social Security successfully processes the majority of GEP enrollments. This is true even if an individual requests a GEP enrollment outside the January through March enrollment timeframe. In those cases, most Social Security offices will hold onto the application until the next GEP. One problem that can arise is when an individual tries to enroll in Part B during their IEP or SEP and Social Security incorrectly processes the request as a GEP enrollment. Since GEP enrollments are not effective until July 1, the individual could experience a gap in coverage.

- **If the individual is using the Part B SEP during the GEP:** They can choose whether their application is processed as an SEP or GEP enrollment.¹⁴⁷
- **If the individual is using their IEP during the GEP:** Their application should be processed as an IEP enrollment.¹⁴⁸
- **If an IEP or SEP enrollment is incorrectly processed as a GEP enrollment:** Appeal the enrollment decision following the directions on the Social Security notice informing the applicant of their Medicare enrollment and effective date. If there is no such letter or the appeals timeframe has expired, request equitable relief (following the steps laid out in the equitable relief section of this toolkit).

What if an individual loses Part B and needs to re-enroll?

The strategies outlined in this toolkit can also apply to situations where someone has disenrolled (or been disenrolled) from Part B and wants to re-enroll. For example, someone disenrolling from Part B because they started receiving job-based coverage can re-enroll in Part B using the Part B SEP. There are three instances, however, that bear specific mention.

First, individuals may lose Part B and want to re-enroll if there has been a failure to pay the Part B premium. This can happen purposefully, when an individual thinks they do not need Part B or cannot afford it, but it often happens accidentally when an individual stops collecting SSDI, since the Part B premium is paid by withholding the amount from their SSDI benefit. Individuals may stop collecting SSDI but remain Medicare-eligible if they go to prison or perform substantial gainful activity.¹⁴⁹ If such an individual has only recently been disenrolled, the best course of action is often to go (or have a representative go) into the local Social Security office with a check made out for the missing premiums. While simply going into the office is an informal mechanism that often

¹⁴⁷ POMS, [HI 00805.275\(C\)](#).

¹⁴⁸ POMS, [HI 00805.030](#).

¹⁴⁹ Individuals making above the substantial gainful activity amount can keep their Medicare eligibility for several years after they stop receiving their SSDI benefits as long as they are still considered disabled. Social Security, [Working While Disabled: How We Can Help](#).

works, beneficiaries officially only have a 90-day grace period to pay their premiums.¹⁵⁰ This period can be extended to 180 days for those who show “good cause” (usually a physical or mental incapacity that prevented an individual from paying their Part B premium).¹⁵¹ Individuals without the ability to pay the full price of their back premiums can request to pay on an installment plan and should also consider whether they are eligible for the Medicare Savings Program.

Second, individuals may want to re-enroll in Part B if they have been incorrectly disenrolled from Part B due to administrative error. This can happen, for instance, if Social Security fails to deduct an individual’s Part B premiums from their SSDI check.¹⁵² In this case, beneficiaries should pursue the equitable relief strategy. They may also try informally resolving the issue at the local Social Security office.

Third, individuals also disenroll themselves from Part B and realize later they made a mistake. This can happen when an individual is enrolled in COBRA and they incorrectly believe it will continue to pay primary for them once they are Medicare-eligible. This can also happen when an individual stops collecting SSDI but remains Medicare-eligible, such as for performing substantial gainful activity. If their disenrollment request has not yet been processed, individuals can often withdraw their declination of Part B (i.e. stop their disenrollment before it goes through) by contacting the local Social Security office.¹⁵³ Advocates should probe why the individual disenrolled themselves to see if misinformation was provided by a federal employee and, if so, help the individual apply for equitable relief.

Case Example

Steve began collecting SSDI in January 2008 and was automatically enrolled in Medicare due to disability on January 1, 2010. At that time, he declined Part B because he had coverage with his spouse’s job-based insurance through current employment at an employer with 200 employees. Steve’s spouse retired in December 2018, but the retiree insurance continued to pay primary for his care. It is now January 2020 and Steve is 60 years old. After a surgery and hospitalization earlier in the month, Steve receives a denial from the retiree insurance saying it will not pay the full amount of an outpatient visit because Medicare is supposed to be primary. Steve asks you to help him enroll in Part B.

How do you help Steve?

- Steve cannot use his IEP, which expired at the end of April 2010 (three months after the month he became entitled to Medicare).
- Steve cannot use the Part B SEP, since it expired at the end of August 2019 (eight months after the month his spouse retired).

¹⁵⁰ [42 U.S.C.A. § 1395g\(b\)\(2\)](#); POMS, [HI 01001.350](#); [HI 01001.355](#).

¹⁵¹ [42 U.S.C.A. § 1395g\(b\)\(2\)](#); POMS, [HI 01001.360](#).

¹⁵² POMS, [HI 00805.220](#).

¹⁵³ There is also a specific provision for those individuals who were automatically enrolled in Part B, declined it, changed their mind, and are still in their IEP. POMS, [HI 00805.055\(B\)](#).

- ❑ You should ask for Steve’s income to see if he qualifies for an MSP. This would enroll him in Part B without a penalty and, at a minimum, pay his Part B premiums going forward. If Steve is eligible for QI, his Part B would be effective starting three months before the month he applied (or January if he applies in January, February, or March). If Steve is eligible for SLMB, his Part B would be effective starting three months before the month he applied. If Steve is eligible for QMB, his Part B would be effective the month after the month he applied. If he is eligible for any of the MSPs, Steve will need to determine whether his retiree insurance will be recouping for the care they incorrectly covered as primary after his wife retired. If they are, he can file a grievance with the plan and reach out to his spouse’s former employer to try to stop the recoupment. MSPs are a good way for Steve to enroll in Part B right away, as long as he is eligible, but their limited retroactivity will be a problem if the retiree insurance recoups payments.
- ❑ You should ask if Steve received any misinformation from a Social Security or 1-800-MEDICARE representative when he initially declined Part B or when he failed to enroll after his spouse retired to see if he might qualify for equitable relief.
- ❑ Steve cannot use equitable relief for Marketplace enrollees since he was never enrolled in Marketplace coverage.
- ❑ Steve can use the D-SEP if his spouse’s employer cooperates by providing the required evidence. The D-SEP can be retroactive to whenever the retiree insurance stopped paying primary. Currently, that looks to be January 2020, but if the retiree insurance recoups primary payments back to the month after Steve’s spouse retired, Part B could be effective January 2019. In that case, Steve would owe Part B back premiums, but his providers could re-submit claims with Medicare as primary.¹⁵⁴
- ❑ If Steve cannot get the correct evidence from his spouse’s employer to use the D-SEP, he can also request equitable relief for disabled individuals.
- ❑ Steve can also file a grievance with his retiree insurance or contact his spouse’s former employer and ask that they continue to pay primary until Steve can enroll using the GEP (Part B would be effective July 2020). If they agree, Steve will still face a 10% Part B LEP when he is enrolled in Part B, though that will be eliminated when he turns 65. Steve can try to remove the LEP by showing that he had insurance that paid primary (e.g. submitting form CMS L564, normally used for the Part B SEP) or requesting the LEP be eliminated by using equitable relief for disabled individuals.

¹⁵⁴ While providers can normally only submit a claim within a year of the date of service, there is an exception for when Medicare is retroactive. [42 C.F.R. § 424.44](#); Centers for Medicare & Medicaid Services (CMS), Medicare Claims Processing Manual [Ch. 1](#) § 70.7.2.